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December 19, 2000

Via Hand Delivery

EX PARTE

Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: InterCarrier Compensation for ISP-Bound Traffic
CC Docket No. 99-68

Dear Commissioner Tristani:

During the meeting yesterday you inquired into the CLEC response to SBC's claim that local calls to ISPs are not "sent paid" and thus not subject to reciprocal compensation. On October 20, 2000 a joint ex parte responding to this and other claims was filed by Allegiance Telecom, Inc., Focal Communications, Intermedia Communications, Inc., Timer Warner Telecom and XO Communications, Inc. and an additional ex parte was filed on behalf of Time Warner Telecom. I am attaching those ex partes for your convenience. In those ex partes, CLECs demonstrated that the SBC theory was contradicted by the facts, and was inconsistent with the way in which local calling rates have been and are set, whereby the variable costs of originating and terminating local calls are placed on the called party.[1]

Please feel free to call with any questions you may have.

Sincerely,

Richard M. Rindler

cc: Magalie Roman Salas
Deena Shetler
Annie Chavez

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[1] See, e.g., Joint CLEC ex parte letter to Dorothy Attwood at pp. 6-9 (October 20, 2000).

October 20, 2000

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68

Dear Ms. Attwood:

This ex parte communication from the under-signed competitive local exchange carriers amplifies certain issues that were discussed during our September 19th meeting concerning the above proceeding.

I. Reciprocal Compensation Rates Have Moved Rapidly to Cost-Based Levels Via State Supervision Pursuant to Section 252.

Four years ago this Commission estimated in its Local Competition Order that the variable costs recovered by reciprocal compensation should fall within a range of $0.002-$0.004/MOU for end office switching, plus $0.0015/MOU for tandem switching (¶ 1060), producing an overall estimated cost of $0.002-$0.0055/MOU for terminating switching. However, the reciprocal compensation rates insisted upon by the incumbents in the initial round of interconnection contracts entered into after passage of the '96 Telecom Act were far in excess of these costs.

The rates successfully demanded by the ILECs (which the CLECs had to accept because arbitration would have delayed their market entry unacceptably) ranged from a high of $0.015/MOU for BellSouth in North Carolina (i.e., 750% to 272% of the Commission's cost range) to a "low" of around $0.008/MOU in several jurisdictions (400% to 145% of the Commission's cost range for switching).

Now that the initial agreements have expired, the states have implemented cost-based reciprocal compensation levels in numerous proceedings supported by vigorously litigated records. For example, the weighted average of terminating switching rates ordered by the four largest states that have addressed this issue over the past year is $0.0027/MOU,[1] which is only $0.0007/MOU above the *bottom* of the Commission's cost range, and less than half (49%) of its cost ceiling.

[1] Attachment A. Further examples of this steep decline are appended in Attachment B.

II. Interconnection Issues - A Proposal Addressing Transport Costs, FX Traffic, and Interconnection Provisioning.

Although this proceeding was intended to address inter-carrier compensation for terminating calls to ISPs, numerous peripheral issues have been raised.

For example, the ILECs contend that not only are they required to pay reciprocal compensation for ISP bound calls, but that they are also required to bear the cost of transporting the calls long distances to interconnect at CLEC POIs. They contend that providing an ISP with NXXs for calling areas in which the ISP does not have a physical presence exacerbates this problem and that these FX-like calls should not be subject to reciprocal compensation.[2] At the same time, CLECs contend that ILECs seek to undercut the CLECs' ability to compete by, among other things, refusing to timely provide trunks and transport, thereby preventing CLECs from providing service to their customers, and artificially reducing the ILECs' reciprocal compensation obligations.

In order to prevent these peripheral issues from distracting the Commission from the fundamental issue of inter-carrier compensation, the undersigned CLECs hereby offer a proposal that resolves all these contentions. As described in more detail below, this proposal requires: (a) a CLEC to create an additional POI for any NXX that is twenty-five (25) or more miles, as calculated by using V+H coordinates, from an existing POI as soon as it becomes cost-efficient for the CLEC to do so; and (b) requires ILECs to timely provision properly forecasted interconnection and transport facilities. This proposal is offered upon the express condition that the Commission agrees that this proposal resolves all these interconnection issues, and thereby is able to adopt it without change. The specifics of this proposal are as follows:

Creation of Additional POIs -- The undersigned CLECs hereby agree that in the event they open up NXXs located twenty-five (25) or more miles, as calculated using V+H coordinates, from an existing POI, they will create a new POI within twenty-five (25) miles, as calculated using V+H coordinates, of that NXX once the volume of traffic involving that NXX is sufficient to make it economically efficient for a CLEC to provision transport involving the new POI. This offer is contingent upon the following understandings, as well as the "Interconnection Provisioning" proposal set out below:

- A CLEC may select the manner in which it would assume the economic burden of transport involving any such new POI including, but not limited to, self-provisioning,

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[2] FX service permits an end user (often a business seeking to insure that potential customers can reach it without placing a toll call) to receive local calls from a local calling area in which the end user is not physically located. The end user obtains a local number within the remote calling area so that in-bound calls will be treated as local. When in-bound calls reach this number, they are then carried outside the local calling area via the FX service to the end user's location. These communications are thus broken into two distinct parts: an in-bound local call (paid for by the calling parties) and a long distance component, the FX service (paid for by the called party).

selection of a third-party vendor, or payment for ILEC dedicated transport at UNE rates.

- A CLEC may select the form of any such new POI, including, but not limited to, meet point POIs (i.e., the designation of a point on an existing transport facility at which the CLEC would assume responsibility for transport), facilities-based POIs, collocation-based POIs, etc.

- It is not economically efficient for a CLEC to provision transport involving a new POI until the monthly volume averages 500,000 minutes per month or more for three consecutive months, unless the parties agree otherwise.

- Once a CLEC agrees to comply with this additional POI proposal, all calls originating from an NXX and terminating to an NXX which are each associated with the same ILEC local calling area shall be treated the same as other calls between NXXs associated with that same area, regardless of the physical location of the called party.

- The additional POI proposal will be implemented over an eighteen month period. During this transition, the requirement to create additional POIs shall attach when a CLEC provides service to NXXs 50 miles or more, calculated using V+H coordinates, from an existing POI. Thereafter, the 25 mile limit shall apply.

- The additional POI proposal is specifically dependent on the utilization of the same costing and pricing methodologies for the establishment of both inter-carrier compensation and UNEs.[3]

Interconnection Provisioning – The Commission shall issue an order that requires ILECs to include in all interconnection agreements provisioning performance standards that, at a minimum, require:

- ILECs to timely provision all good faith forecasted interconnection facilities;

- the imposition of liquidated damages for failure to timely provision properly forecasted facilities;

- performance metrics to measure quality provisioning.

Attachments C and D provide examples of language and minimum performance requirements that might be incorporated in interconnection agreements to effectuate the Commission's order.

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[3] This issue is discussed in detail at VI. *infra*.

If adopted, this proposal would cure the ILECs' complaints about increased transport costs. Furthermore, this proposal would insure that an ILEC's costs to transport ISP-bound traffic would be effectively the same regardless of whether an end user were physically located within the local calling area, or if it were connected via a CLEC's FX-like service. Finally, the ILECs would no longer be able to escape their obligation to provision properly-forecasted interconnection and transport facilities.

By contrast, various ILEC approaches to this issue would needlessly require the installation of new facilities, collocation provisioning, replication of the ILEC network topology, etc., and completely disregard facilities provisioning problems.[4] Unlike the deliberately burdensome ILEC approaches, the additional POI proposal does not require CLECs to duplicate ILEC network architectures by creating POIs in every ILEC calling area. Furthermore, any new POI mandated by these rules may consist of a simple meet point (i.e., a specification of the point on a transport facility beyond which the CLEC would assume transport cost responsibility) unless the CLEC prefers instead to establish a facilities-based POI. Finally, provisioning is expressly linked to forecasting. Adoption of this proposal would resolve these important issues; while insuring that inter-carrier compensation concerns can be addressed according to their own merits.

III. The ILEC's Proposal to Set Reciprocal Compensation Rates Below Cost Via a Cap is Fundamentally Inconsistent with the Procompetitive Mandate of the 1996 Act.

ILECs have argued that the payment of inter-carrier compensation for calls to ISPs are a significant and growing drain on ILEC revenues because the costs of these calls are not covered by local service rates. As demonstrated by their own submission, the ILECs are wrong on all counts. The ILECs in their own projections confirm our position that reciprocal compensation rates have rapidly declined to levels consistent with the Commission's own cost findings. In an attachment to Bell South's *ex parte* of October 12[5] filed in this proceeding, the ILECs' show the rates for reciprocal compensation declining by over 30% a year. The ILECs project reciprocal compensation rates of $0.0040 in 2000, $0.00275 in 2001 and $0.0015 in 2002. Thus, without any Commission action, the ILECs see rates in 2000 that are within the Commission's original cost-based estimates, and within two years, rates declining *below* the Commission's lowest cost estimates. These projected rates are also below the cost-based rates established by the state commissions in recently litigated proceedings.

Having confirmed that reciprocal compensation rates are presently at cost and are rapidly trending down, the ILECs have the temerity to propose that the Commission interfere with this result and instead set the rates *below* cost. They seek to accomplish this by having the Commission impose an artificial cap on total reciprocal compensation revenues. This proposal would result in MOU rates which are an order of magnitude below the costs determined by the states and this Commission (*see* Section 1, supra). The ILECs provide absolutely no support for

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[4] See, e.g., Verizon's ex parte in this docket filed October 4, 2000.

[5] *Ex Parte* October 12, 2000, filed on behalf of Bell South, Verizon, Qwest and SBC, Attachment I, Potential Cost of Reciprocal Compensation for Terminating Internet Traffic.

their cap, and the record in this proceeding is devoid of any evidence to sustain the ILEC proposal. Indeed, the proposal is flatly inconsistent with the Commission's own finding four years ago that reciprocal compensation rates must be set at cost. The ILECs, nevertheless, now seek to delink costs and reciprocal compensation rates. They provide no justification for this abandonment of the fundamental principles of the 1996 Act. The only inference that can fairly be inferred from the ILEC proposal is sheer greed and a determined effort to drive competitors from the market. The adoption of the ILEC proposal would clearly be unlawful and set aside on judicial review.

The ILECs appear to think that this extraordinary proposal is justified by their conclusion that reciprocal compensation rates (not access rates) will move to bill and keep, and that establishing below-cost rates is an appropriate "transition" to bill and keep. The Commission should not in this proceeding prejudge the issue of bill and keep. Whatever the Commission determines in some later proceeding about bill and keep does not justify the imposition of below cost rates in this proceeding. The ILECs, having confirmed that rates are now being set at cost, can provide no basis on which the Commission may adopt this proposal.

While the ILECs often complain of alleged revenue shortfalls due to ISP bound calls and other long duration calls, not a single credible study has been placed in the record in this proceeding that demonstrates any such shortfall, once the appropriate revenues and costs (including avoided costs) are properly accounted for. In fact, the only study submitted in this proceeding[6] purporting to demonstrate a shortfall, was soundly discredited by an economist.[7]

Moreover, even if the ILECs were correct that some intrastate rate structures fail to compensate them adequately for longer duration calls, this Commission has already directed the ILECs' to address their concerns to the state commissions.[8] The ILECs, however, appear intent upon circumventing the Commission's decision.

If the ILECs were to seek rate increases from state commissions, the state commissions would be in a position to assess the validity of the ILEC claims. Further, it is clear that dial-up calls to ISPs are not growing at their previous rate as DSL and other Internet access methods become more widely available. As recently noted "the proportion of on-line households accessing the Web via shared lines . . . dropped 9% (to 68%) in the past six months."[9]

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6 Ameritech Comments, Dkt. 99-68 (April 12, 1999).

7 Reply Comments of the Association for Local Telecommunication Services, Dkt. 99-68, at 18-24 (April 27, 1999).

8 *Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15982, ¶ 346 (1997).

9 Fall 2000 *Ownership Report*, Statistical Research, Inc., October 10, 2000, http://www.statisticalresearch.com/press/pr20001010.htm.

Moreover, if the ILECs were to accomplish their goal of eliminating reciprocal compensation, the ILECs would receive a windfall. Under the sent-paid model of local rate development, end-user revenue, in total, is designed to recover the costs of call origination and call termination. When the ILEC's customer calls a CLEC customer (e.g., an ISP), the ILEC avoids the cost of call termination, while the CLEC incurs the cost of call termination. Under the ILECs' proposal, ILECs would avoid the costs but retain the revenue in end-user rates. Given the fact that large states such as Illinois and New York[10] have minute of use local calling rates that the ILECs collect and would retain under this proposal, the ILEC windfall would be even more substantial and totally unjustified.

There is simply no record basis for the Commission to adopt the ILEC proposals, nor would it be lawful to do so.

IV. SBC's Claim That Local Calls To ISPs Are Not "Sent Paid" -- And Thus Supposedly Are Not Subject To Reciprocal Compensation – Is Contradicted by the Facts.

SBC continues to argue in its ex parte filed September 15, 2000, in this proceeding that calls to ISPs are not sent paid calls. See September 15th ex parte at Part I.E. SBC begins by correctly stating that reciprocal compensation is paid for local traffic because local calls are "sent paid." SBC then asserts this is supposedly not the case with ISP-bound traffic because ISPs pay three specific charges: (1) the business line or other state tariffed rates; (2) the subscriber line charge; and (3) special access surcharges for private lines. Such payments, SBC asserts, demonstrate that ISPs pay for receiving calls, a view supposedly confirmed by the characterization of rates paid by ISPs in past Commission orders and an appellate court decision. SBC's argument is patently wrong. As explained in detail below, the subscriber line charge and private line surcharge are interstate rate elements, and thus have no bearing on the recovery of the intrastate variable costs of terminating local traffic. As for the third rate element cited by SBC -- the intrastate business line rate -- no state has ever altered the "sent paid" status of local calls for any traffic segment. SBC's contention that this Commission somehow altered the sent paid status of these calls is factually unfounded, and is also plainly beyond this Commission's authority so long as it continues to permit ISPs to receive local calls using intrastate local rates.

None of the three charges cited by SBC recovers the intrastate variable costs associated with the transport and termination of ISP-bound traffic. First, because all the costs associated with ISP-bound local calls (including the variable costs of originating and terminating switching) are allocated to the intrastate rate base, those costs are recovered through local service charges tariffed at the state level. SBC does not (and cannot) suggest that states somehow set local business rates so that business customers pay for the transport and termination of calls they receive. Rather, costs associated with calls bound for these customers are recovered from the customers originating those calls. They are thus "sent paid," and since ISPs purchase local business service, calls bound for ISPs are also "sent-paid."

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[10] Attached is the Verizon New York tariff and Ameritech Illinois tariff.

Second, the federal subscriber line charge only recovers the interstate cost of the dedicated connection between a customer and the switch serving the customer. See 47 C.F.R. § 69.104, § 69.152. The transport and termination charges assessed by the Commission's reciprocal compensation rules do not recover the cost of the called party's loop connection to its LEC. Instead, these rules permit the carrier serving the called party to be reimbursed only for (1) the variable costs of transmission (including any necessary tandem-like switching) from the interconnection point between the carriers to the terminating carrier's switch serving the called party, and (2) the variable costs of switching the terminating call to the called party. See 47 C.F.R. § 51.701(c)(d). LECs must recover the entirely distinct costs associated with loops directly from their local customers, ISPs included. The fact that all end users, including ISPs, pay state-tariffed and federal subscriber line charges to cover these costs is utterly irrelevant to the recovery of the transport and termination costs of ISP-bound traffic, or any other local traffic.

Third, the interstate special access surcharge cannot possibly be understood to recover the costs of transporting and terminating traffic to ISPs. The special access surcharge is an averaged charge imposed on certain private line channels for the purpose of recovering costs associated with interstate traffic that "leaks" into the local exchange (e.g., because the special access line is connected to a PBX, enhanced service equipment, or some other equipment owned by an end user that eventually connects into the local exchange). The surcharge does not recover the cost of transporting and terminating traffic to ISPs or any other end users because those costs are entirely allocated to the intrastate jurisdiction.[11]

As the Common Carrier Bureau explained in the Letter Ruling, the "traffic sensitive costs" of providing local service to ISPs (as well as all end users), i.e., the costs recovered in transport and termination charges, "must be allocated entirely to intrastate operations." See Letter Ruling, Appendix. The states are therefore responsible for setting charges to recover the costs associated with carrying ISP-bound local calls, and the federal special access surcharge does not recover these costs. Rather, the special access surcharge is simply a nominal contribution made by ISPs as well as all end users purchasing similar facilities to compensate for some perceived shortfall caused by the leaky PBX phenomenon.[12] Given that all of the costs of transporting and terminating ISP-bound calls are allocated to the intrastate jurisdiction, ISP-bound calls do not add to that shortfall.

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[11] See Public Notice, 14 FCC Rcd 8178, Appendix, Letter from Lawrence E. Strickling, Chief Common Carrier Bureau to Dale Robertson, Sr. Vice President, SBC Communications, Inc. (May 18, 1999) (ordering SBC to allocate the costs associated with the local switching and transport of ISP-bound traffic to the intrastate jurisdiction) ("Letter Ruling").

[12] Even if the special access surcharge were designed to recover the costs of transporting and terminating calls to ISP, it would be ill-suited to achieve this goal. This is because it is imposed on special access circuits purchased by ISPs. Those circuits can and often are provided by a firm (including the ISP itself) other than the LEC providing local service to the ISP. The surcharge, originally adopted in a monopoly environment, cannot therefore achieve the task SBC assigns it.

Looking beyond SBC's misportrayals of the end user charges paid by ISP end users (and by all other end users as well), SBC's true complaint is that local service "sent paid" charges do not – in SBC's opinion -- adequately cover the cost of ISP-bound local calls. This contention of SBC is not only flawed but is also brought to the wrong forum. As the Commission explained in the First Report and Order in the Access Charge Reform proceeding, "[t]o the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators." Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, ¶ 346 (1997). Of course, the Commission found no evidence that such a revenue shortfall exists. Id. Nor is there any sound reason why reciprocal compensation should affect any purported revenue shortfall, so long as the price for reciprocal compensation reflects the correct forward-looking variable costs of transport and termination. If set properly, those rates only compensate the terminating LEC for costs that the originating LEC avoids when it is not required to transport and terminate calls to a called party. The originating LEC is therefore in the same position regardless of whether it terminates the traffic to an ISP itself or pays another LEC to perform this service.

In any event, the ILECs are estopped from now asserting that the federal access charge regime allows for the recovery of the costs of ISP-bound traffic in the form of the special access surcharge and the subscriber line charge. In their appeal of the First Report Order in Access Charge Reform proceeding, for example, the ILECs (including SBC) argued that the end user status of ISPs "excuses ISPs from paying the access charges associated with their traffic over the LECs' local networks" and results in "uncompensated costs associated with the LECs' service to ISPs." See Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523, 541-542 (8th Cir. 1998). Apparently, SBC views the access charges paid by ISPs as compensatory when paid to CLECs, but not when paid to ILECs.

Turning to the past Commission orders cited by SBC, they utterly fail to support the claim that ISPs pay for the transport and termination of ISP-bound traffic.[13] To begin with, SBC asserts that "although the access charge exemption altered the amount of money the ISP pays for its access service, it did not transform the compensation methodology into the sent-paid methodology used for local traffic." September 15th ex parte at Part I.E. In fact, the point of the Commission's decision to continue treating ISPs (enhanced service providers in the parlance of 1983) as end users was that nothing (except the new obligation to pay the nominal special access surcharge) would change about the way ISPs paid for connecting to the network.[14]

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[13] One significant threshold problem for SBC's argument is that so profound a change in the regulatory regime for local calls to ISPs would need to be plainly stated in the Commission's finding. And given the Commission's unequivocal conclusion that ISPs should be treated just like other end users, the creation of a such "loophole" concerning the "sent paid" status of local calls to ISPs would require a plain and unambiguous finding. Because no such finding exists, all local calls -- including local calls to ISPs -- remain "sent paid," and SBC's argument collapses.

[14] See MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682, ¶83 (1983).

As the Commission explained, after the introduction of access charges, ESPs "will remain subject to business local exchange service charges for the line between the . . . enhanced service node . . . and the telephone company's local switch. In addition, all switching functions will continue to be subsumed under the local business rate." Id., ¶ 88 (emphasis added). Those local business rates were based on the "sent paid" approach then and they are based on "sent paid" approach now. SBC tries to argue that the reference to local switching as subsumed in the local rates paid by ISPs indicates that the Commission thought that ISPs pay for the costs of receiving traffic. But the Commission knew then how local business rates worked (just as it knows now). The Commission's use of the word "continue" amply demonstrates the Commission did not make any changes to the "sent-paid" status of local calls when they are terminated to ISPs.

Nor is SBC's reliance on other precedents in the ex parte any more convincing. For example, SBC's construction of the Commission's statement in the Access Charge First Report and Order is misleading. As mentioned, the Commission stated in that order that incumbent LECs should address concerns with the states to the extent that "some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls."

This statement is hardly conclusive evidence that the Commission believes that ISP local rates should cover the cost of delivering traffic to ISPs. Nor is it, as mischaracterized by SBC, a conclusion that ILECs "should raise the rates they charge ISPs." (See September 15 ex parte, Part I.E.) Rather, the Commission's deliberate reference to "customers with high volumes of incoming calls", which plainly applies to end users in general, and not just ISPs, contemplates local rate restructuring, not ISP surcharges. Moreover, the reference to the access charges paid by ISPs in the NARUC v. FCC decision is to the special access surcharge and the subscriber line charge, neither of which, as explained above, is relevant to reciprocal compensation.

SBC's "sent paid" argument is utterly unfounded, and should be rejected by the Commission.

V. The Commission Should Not Focus Upon Its Authority to Order "Bill and "Keep" in the Present Proceeding.

The Commission has indicated that it intends to issue a Notice of Inquiry to address comprehensively the issue of inter-carrier compensation. We are aware that the Commission will likely seek comment on the idea of bill and keep for all forms of inter-carrier telecommunications traffic. Without taking any position here on the merits of a broad application of bill and keep to inter-carrier compensation, we urge the Commission not to pre-judge the outcome of a broader proceeding by selectively applying bill and keep only to local competition at this time. If, after full notice and public comment, the Commission believes that bill and keep is appropriate for inter-carrier compensation and not in conflict with the Telecommunications Act, it should implement it simultaneously and uniformly across all forms of inter-carrier traffic.

VI. Rates for Switching and Transport UNE Elements Should Be Identical to the Rates for the Same Functions Within Reciprocal Compensation.

Most state commissions that have completed cost proceedings have established the same rates for the switching and transport UNE elements as they have for the same functions that are recovered by reciprocal compensation. For example, the reciprocal compensation rates recently adopted by the Texas PUC are based on the Southwestern Bell UNE cost studies. Similarly, the New York PSC used the UNE tandem, end office, and transport prices to set reciprocal compensation rates.

The importance of insuring that the same prices are applied to the same functions in different proceedings is much more than just a matter of logical consistency. The ILECs have immense incentives to set UNE rates high, while trying at the same time to set reciprocal compensation rates artificially low. Consequently, if an ILEC were to try to sponsor a cost methodology that would benefit it in a reciprocal compensation proceeding, that same methodology would have just the opposite effect in a UNE rate proceeding, provided consistency were maintained. This has the obvious effect of restraining an ILEC's effective ability to argue for novel and unfounded cost positions, thereby narrowing the range of cost issues, and expediting their resolution.

But this result only exists so long as the same rates are required for the same functions, no matter what the proceeding involved. If the ILECs were able to sever that linkage, they would then to be free to conjure up whatever cost theories they wanted, and thereby protract any final resolutions. The Commission should resist this by a simple affirmation that states should use the same rates for the same functions in UNEs as they do for reciprocal compensation.

VII. The Commission Should Not Attempt to Address VoIP Traffic in this Proceeding.

We do not believe the Commission has a record in the present proceeding that would permit it to address any of the issues associated with Voice over Internet Protocol ("VoIP") traffic. Indeed, the inadequacy of the current record in this regard is aptly demonstrated by the fact both Qwest and SBC have injected arguments concerning VoIP for the first time in their reply comments (Qwest at 9, n. 11; SBC at 22, n. 42).

The Commission should expressly reserve all issues and aspects involving VoIP traffic for a future proceeding. However, there is one important point about the ILECs' last minute reliance on VoIP traffic in trying to argue that ISP-bound calls resemble ordinary inter-exchange calls. Plainly, the fact the ILECs must resort to VoIP calls in order to find an analogy to ordinary interexchange calls simply underscores that ISP-bound local calls which do not involve VoIP are clearly distinguishable from interexchange calls.

Please let us know if we can address any other questions you might have.

Yours truly,

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ATTACHMENT A

CALCULATION OF THE AVERAGE RECIP COMP RATE ORDERED IN THE PAST
12 MONTHS BY THE FOUR LARGEST STATES, WEIGHTED BY ILEC ACCESS LINES PER STUDY AREA

Four largest states ruling on recip comp rates in the last 12 months	Recip Comp Rate	ILEC Access Lines*
New York	$0.003400	12712808
Illinois	$0.003746	6830172
Georgia	$0.002309	3996188
Texas	$0.001096	9328001

Weighted average recip comp MOU rate = $0.0027

*PRELIMINARY STATISTICS OF COMMUNICATIONS COMMON CARRIERS, FCC, 1988 Ed., p. 20

ATTACHMENT B

COMPARISON OF INITIAL RECIPROCAL COMPENSATION RATES WITH CURRENT RATES

Rate	CA	FL	GA	IN	NC	OH	TX*	WI
EO:								
old		$0.1028		$.0070		$0.0070	$0.00725	$0.0070
new		$0.002		$0.004097		40.003815	$0.001096	$0.004241
Tandem:								
old		$0.01056	$0.009910	$0.0090	$0.01344	$0.0090	$0.00975	$0.0090
new			$0.003101	$0.00458	$0.00308	$0.0046970	$0.000794	$0.005239

* Up to a 3:1 ratio, carriers are compensated 42% of the tandem and transport cost in addition to the EO rate. Highest CLECs are able to rebut the presumption that only 42% of its traffic should be compensated at the tandem rate.

ATTACHMENT C

Methods and Procedures for Forecasting, Ordering and Provisioning Interconnection Trunks

Forecasts: At six month intervals, the ILECs will provide good faith trunk forecasts for each POI, for which a CLEC pays for dedicated transport. The forecast will provide quarterly projections for local trunking volumes, switch-ports and interoffice transport facilities that the other Party will need to efficiently terminate its customers' originated traffic.

Ordering and Provisioning: The CLEC shall order the quantity of incoming trunks within the specified quarter as detailed in the forecast. If it is necessary for the ILEC to request that non-forecasted incoming trunks be ordered, the ILEC shall use a Trunk Group Service Request (TGSR) to issue a request.

Trunk Group Target Utilization Rate: The trunk group utilization shall be determined by calculating the trunk group capacity at a P.01 grade of service and Erlang B traffic tables. If the trunk groups are high usage groups, the calculation should be made using the high usage traffic tables and based on P.01 grade of service.

- If, after 180 calendar days of trunk installation, the overall trunk group utilization rate at peak busy hour is less than [X]% of the target utilization rate, the CLEC shall provide proper notice to the ILEC, and submit a request via a TGSR reflecting that such trunks are to be disconnected. Within thirty (30) calendar days of receiving proper notice and the TGSR to disconnect, the CLEC and the ILEC shall confer with each other and mutually agree to disconnect such trunks.

- In the event the ILEC and the CLEC are unable to agree to disconnect such trunks, and it is determined that the trunks are in fact under-utilized, payment shall be made by the ILEC to the CLEC for the percentage of the trunk group's total monthly recurring charge equal to the difference between the actual utilization rate and the Target Utilization Rate. For example, if during a specified period, the target utilization rate is 60% and the CLEC's utilization is only 40%, the CLEC will be credited by the ILEC for 20% of the monthly recurring charge for the trunk group for each month of the specified period.

- In the event the ILEC fails to timely provision forecasted trunks or transport, the ILEC shall pay the CLE [X%] of the monthly recurring charge for the trunk group for each month of the specified period.

ATTACHMENT D

Baseline Service Level Performance Measurement Areas:

Pre Ordering	Provisioning	OSS
Response Time for CSR	On-Time Service Delivery	OSS Availability
Response Time Due Date Availability	FOC Response Time	OSS Outage Time
Response Time for Address Validation	Reject Notification Response Time	
Response Time for Loop Qualification	Missed Installation	
	_% Orders held for lack of facilities	
Response time for Reject notification	% Troubles within 24 Hours of Provisioning	
% Rejected Service Requests	Held Order Interval and Mean	
	Order Completion Interval	
	Jeopardy Interval and Percent Jeopardy	

Maintenance	Billing	Collocation
Trouble Report Rate	Billing Accuracy	% of Missed Collocation Due Dates
Mean Time to Repair	Billing Timeliness	Average Delay Days for Missed Due Dates
Out of Service > 24 Hours	Billing Dispute Interval	Percent of Requests Processed within agreed Timelines
% Troubles within 30 days of Provisioning	Interval to Correct Billing Errors	
Missed Repair Appointments		

3. USAGE SERVICES IN MARKET SERVICE AREAS 1, 2, 3, 6, 7, 9, and 15 (cont'd) (T)/2/

3.2 The following services are available in these Market Service Areas: (T)

A. Business Usage Service

1. Available to all business customers as described in 1.3A preceding, including direct line, P.B.X. and Switching System Services except Dormitory Service, Integrated Information Network, Centrex Switching Service and Centrex Service (Basic). (C) (C)

2. Band A, B, and C Business Usage Services are classified as competitive for all business customers.

   In addition, Business Usage Service is available to business customers ordering business port(s) as specified in Part 19, Section 1 of tariff Ill. C.C. No. 20.

3. Provides for calling on a timed basis.

4. Rates and charges are as specified in 3.3 and 3.4 following. (T)/2/

B. Residence Usage Service (N)

1. Available to all Residence customers, as described in 1.3B preceding, including direct line, P.B.X. and Dormitory Service. In addition, available to customers ordering residence port(s) as specified in Part 19, Section 1 of tariff Ill. C.C. No. 20.

2. Provides for calling charged on an untimed per call basis to terminating districts in Band A. All other calls are charged on a timed basis.

3. Rates and charges are as specified in 3.3 and 3.4 following and Part 4, Section 2, of tariff Ill. C.C. No. 20. (N)

/1/ Material now appears on Sheet Nos. 2.2 through 25 in this Section.

/2/ Material formerly appeared on Sheet Nos. 1 through 14 in this Section.

3. USAGE SERVICES IN MARKET SERVICE AREAS 1, 2, 3, 6, 7, 9, and 15 (cont'd) (T)/2/

3.2 The following services are available in these Market Service Areas: (cont'd)

C. Residence 5 & 5 Calling Plan (C)

1. Available to all Residence customers as described in 1.3 B. preceding, including direct line, P.B.X. and Dormitory Service.

2. Provides for calling charged on an untimed per call basis to terminating districts in Band A. All other calls are charged on a timed basis.

3. Rates and charges for the Residence 5&5 Calling Plan are as specified in 3.3 E. following. (C)/2/

/1/ Material now appears on Sheet Nos. 2.2 through 25 in this Section.

/2/ Material formerly appeared on Sheet Nos. 1 through 14 in this Section.

3. USAGE SERVICES IN MARKET SERVICE AREAS 1, 2, 3, 6, 7, 9, AND 15 (cont'd)

3.3 Rates and Charges

A. Minutes of Use (MOU) are charged at a declining rate for Business Usage Service. Usage is accumulated on a per account basis during the customer's billing period, with the declining rate charged as described in Paragraph C.

B. Minutes of Use Rate Schedules

1. Business Usage Rate Schedules

/1/ (D)

(D)

/1/ Bands A & B Volume Discounts eliminated effective with bills issued on or after February 5, 1999. (C)

3. USAGE SERVICES IN MARKET SERVICE AREAS 1, 2, 3, 6, 7, 9, AND 15 (cont'd)

3.4 Usage Charges

A. Business and Residence Schedules

Minutes of use charges vary by band. For residence schedules, see also Ill. C.C. No. 20, Part 4, Section 2, for rates for Band A and Band B usage. Initial period and overtime period charges, by band, are as follows:

1. Business Usage Service

a. Usage charges applicable to business customers

Band	Initial and Subsequent Time Period	All Period Rating Initial Period Charge	All Period Rating Subsequent Period Charge	
A	1 Minute	.0400	.0150	(T)
B/1/	1 Minute	.0800	.0400(I)	
C/1/	1 Minute	.1200(I)	.1200(I)	(C)

/1/ Effective with bills issued on or after August 19, 1999. (C)

3. USAGE SERVICES IN MARKET SERVICE AREAS 1, 2, 3, 6, 7, 9, and 15 (cont'd)

3.4 Usage Charges (cont'd)

A. Business and Residence Schedules (cont'd)

2. Residence Usage Service in Market Service Areas 2, 3, 6, 7, 9 and 15/1/

		Peak Period Rating		Discount Period Rating	
		Initial Period Charge	Subsequent Period Charge	Shoulder Peak Charge	off Peak Charge
A	Untimed	$.0560	Not Applic.	90% of	60% of
B	1 min.	.0500(R)/3/	.0170(R)/3/	Peak Period	Peak Period (N)

Peak period rates are applicable for calls between 9:00 a.m. and /2/11:00 a.m., and between 2:00 p.m. and /2/8:00 p.m., Monday through Friday. Discount period rates are applicable as follows: Shoulder Peak for calls between 8:00 a.m. and /2/9:00 a.m., 11:00 a.m. and /2/2:00 p.m., 8:00 p.m. and /2/9:00 p.m., Monday through Friday; Off Peak for calls between 9:00 p.m. and /2/8:00 a.m., Monday through Friday, and 9:00 p.m. Friday through /2/8:00 a.m. Monday. Calls overlapping these periods will be rated as specified in C. following. Shoulder Peak discount does not apply to Business Operator Assisted Band C Usage.

/1/ Band A and B Residence Usage Services are classified as competitive for all Residence customers in the following districts: Alton, Belleville, Champaign Urbana, Collinsville, Danville, Decatur, East Moline, East St. Louis, Edgemont, Edwardsville, Granite City, Moline, O'Fallon, Peoria, Quincy, Rock Island, Rockford, Springfield, and Wood River. Band C Residence Usage Service is a competitive service.

/2/ To but not including

/3/ Effective with bills being issued after August 14, 1999.

C. MESSAGE RATE SERVICE

** 1 BASIC LOCAL SERVICE CHARGE PER MONTH £ ¢

a. Residence

Basic Life Line	$1.00
Basic Message . . . . .)	
Auxiliary* . . . . .)	6.60 (5.60)#
Trunk . . . . .)	

** Charges for Extension Service as specified in Section 2. Paragraph B. of Tariff P.S.C. No. 900--Telephone apply as appropriate.

* Calls made over an auxiliary line are charged for as if made over the individual line.

£ Calls to which the Home Region rate applies are untimed.

¢ Monthly local service charge does not include a monthly allowance for local calls.

The amount in parenthesis ( ) represents the equivalent link amount that will be reduced from the full service line amount when a customer utilizes the corresponding port rate from Section 25.

(T

Issued pursuant to the Order of the Public Service Commission of December 18, 1992, in Case No. 91-C-1174, and without waiver of or prejudice to any rights or objections of New York Telephone Company with respect to such Order.
Issued: January 7, 1993. Effective: January 15, 1993.
By Cornelia McDougald, General Attorney
1095 Avenue of the Americas, New York, N.Y. 10036

C. MESSAGE RATE SERVICE (Cont'd)

BASIC LOCAL SERVICE CHARGE PER MONTH (Cont'd)

b. Business £

Timed## Individual Line	Timed## Auxiliary Line	Timed## Trunk	
$16.23 (13.09)	$16.23 (13.09)	$16.23 (15.32)	(C)

There is no allowance of local calls per month for business service.

* Charges for Extension Service as specified in Section 2, Paragraph B. of Tariff P.S.C. No. 900--Telephone apply as appropriate.

Refers to timing of calls to which the Home Region rate applies.

£ The amount in parenthesis ( ) represents the equivalent link amount that will be reduced from the full service line amount when a customer utilizes the corresponding port rate from Section 25. The full service line amount applies except in those wire centers where the Company exercises the Flexible Pricing Option. A Rate Schedule for such wire centers will be issued in accordance with Paragraph R.4.c. of Section 1.

Issued: pursuant to the Order of the Public Service Commission of December 18, 1992, in Case No. 91-C-1174, and without waiver of or prejudice to any rights or objections of New York Telephone Company with respect to such Order.
Issued: January 13, 1993. Effective: January 15, 1993.
By Cornelia McDougald, General Attorney
1095 Avenue of the Americas, New York, N.Y. 10036

C. MESSAGE RATE SERVICE (Cont'd)

2. CHARGES FOR LOCAL CALLS

Calling patterns will not be affected by the 516/631 NPA geographic area code split.

a. Rates (C)

Residence

The following table shows the charges (in cents) for all intrastate calls between stations bearing the designations of central offices within the New York Metro LATA. (T)

Home Region calls are untimed and the rate is on a per call basis. The letter H indicates that the Home Region rate shown in 2.a.(1) following applies.

Region-to-Region calls are timed and the rates shown in 2.a.(2) following apply for each minute or fraction thereof. (C) (C)

(1) Home Region Calling*

10.6¢ per call

* A discount of 40% applies per call made in the Evening Rate period and a discount of 65% applies per call made in the Night Rate period for Home Region Calling. The rate periods are shown in Paragraphs c. and d. following. (C)

(2) Region-to-Region Calling#, **, £

	Day	Evening	Night
Per Minute or Fraction Thereof	7.0¢	5.0¢	4.0¢

Home Region and Region-to-Region Calling

The letter H indicates that the Home Region rate applies and the letter R that the region-to-region rate applies.

From Region	To Region: New York City	Nassau	West Suffolk	East Suffolk	Lower Wchtr	Upper Wchtr	Rockland	(C)
New York City	R	R	R	R	R	R	R	
Nassau	R	H	R	R	R	R	R	
West Suffolk	R	R	H	R	R	R	R	
East Suffolk	R	R	R	H	R	R	R	
Lower Wchtr	R	R	R	R	H	R	R	
Upper Wchtr	R	R	R	R	R	H	R	
Rockland	R	R	R	R	R	R	H	

For ECONOPATH Calling Plan Service see Paragraph O. and for exceptions see Paragraph a.(3) following.

** Day, evening and night rate periods are shown in Paragraph C. 2. c. following.

£ To be implemented with the customer's first full bill period following the effective date of this Tariff. (N) (N)

C. MESSAGE RATE SERVICE (Cont'd)

2. CHARGES FOR LOCAL CALLS (Cont'd)

a. Rates - Day Period Charges (Cont'd)

Business

The following table shows the charges for customer dialed station-to-station sent-paid calls originating from business services lines between stations bearing the designations of central offices within the New York Metro LATA.

Home Region and Region-to-Region calls are timed; for Home Region, the rate is for the first three (3) minutes or fraction thereof for Region-to-Region, the rate is for the first minute or fraction thereof. The letter H indicates that the Home Region rates shown in 2a.(1) following apply. The charge for each additional minute shown (in cents) in 2.a. (1) and (2) following applies to each additional minute or fraction thereof.

(1) Home Region Calling**, ##

8.0¢ - 1st 3 minutes or fraction thereof
1.3¢ - each add'l min. or fraction thereof

(2) Region-to-Region Calling*, #, +

	FROM REGION	New York City	Nassau	West Suffolk	East Suffolk	Lower Wchtr	Upper Wchtr	Rockland
Initial Min	New York	H	11.0	11.0	11,0	11.0	11.0	11.0
Ea Add'l Min	City		8.0	8.0	8.0	8.0		8.0
Initial Min	Nassau	11,0	H	11.0	11.0	11.0	11.0	11.0
Ea Add'l Min		8.0		8.0	8.0	8..0	8.0	8.0
Initial Min	West	11.0	11.0	H	11.O	11.0	11.0	11.0
Ea Add'l Min	Suffolk	8.0	8.0		8.0	8.0	8,0	8,0 (C)
Initial Min	East	11.0	11.0	11.0	H	11.0	11.0	11.0
Ea Add'l Min	Suffolk	8.0	8.0	8.0		8.0	8.0	8.0
Initial Min	Lower	11,0	11.0	11.0	11,0	H	11.0	11.0
Ea Add'l Min	Wchtr	8.0	8.0	8.0	8.0		8.0	8.0
Initial Min	Upper	11.0	11.0	11.0	11.0	11.0	H	11,0
Ea Add'l Min	Wchtr	8.0	8.0	8.0	8.0	8.0		8.0
Initial Min	Rockland	11.0	11.0	11.0	11.0	11.0	11.0	H
Ea Add'l Min		8.0	8.0	8.0	8.0	8.0	8.0	

A discount of 40% applies per call made in the Evening Rate period and a discount of 65% applies per call made in the Night Rate period. The rate periods are shown in Paragraphs c. and d. following.

See explanation of endnotes on Page 20.2.

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October 20, 2000

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket Nos. 96-98; 99-68

Dear Ms. Salas:

On October 4, 2000, representatives for Time Warner Telecom ("TWTC") met with several members of the staff of the Pricing Division of the Common Carrier Bureau to discuss the application of reciprocal compensation to the exchange of ISP-bound traffic. During the meeting, the staff raised the following questions: (1) do LECs (either ILECs or CLECs) incur incremental costs when they transport and terminate dial-up traffic to ISPs; (2) if the FCC were to conclude that ISP-bound traffic is subject to Sections 251(b)(5) and 252(d)(2), could the FCC also impose bill and keep on all Section 251(b)(5) traffic, even where that traffic is substantially imbalanced; (3) assuming again that ISP-bound traffic is subject to Sections 251(b)(5) and 252(d)(2), what rate structure should apply to all traffic subject to the pricing rules of Section 252(d)(2); and (4) what costs does an originating LEC avoid when calls originating on its network are terminated by another LEC. These questions are addressed below.

1. CLECs Do Incur Costs When Transporting And Terminating Dial-Up ISP-Bound Calls.

There should be no dispute that LECs incur more than de minimis costs when transporting and terminating local traffic, including ISP-bound traffic. The Commission concluded in the Local Competition Order that "carriers incur costs in terminating traffic that are not de minimis."[1] The

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd 15499, ¶ 1112 (1996) ("Local Competition Order"). The Commission reiterated this conclusion in an NPRM in this proceeding. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Notice of Proposed Rulemaking, 14 FCC Rcd

Commission may not now abandon this holding absent a reasonable basis for doing so. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 57 (1983). Yet no such reasonable basis exists on the record in this proceeding or anywhere else for that matter. Indeed, even those studies that have advocated bill and keep have recognized that transport and termination functions cause carriers to incur more than de minimis costs.[2] Furthermore, a conclusion that transport and termination imposes only de minimis incremental costs on carriers would contradict the state regulatory commission decisions on the subject as well as the FCC's own decision to adopt per minute charges for unbundled switching and shared transport.[3] There is simply no basis for asserting that every one of these generally consistent conclusions has suddenly been revealed as incorrect.

Furthermore, the ILECs themselves have long claimed that the cost of transporting and terminating voice traffic is more than de minimis. As Don Wood, a telecommunications analyst with extensive experience in analyzing telecommunications carriers' costs, explained in a Declaration filed with TWTC's reply comments in this proceeding, there is no basis for concluding that transporting and terminating ISP-bound traffic imposes fewer costs on CLECs than LECs incur when transporting and terminating voice traffic.[4] First, it is both true and irrelevant that ISP-bound calls are generally longer than most other calls. To the extent that rate structures are designed to accurately reflect the manner in which costs are incurred (e.g., through separate call set-up charges), call duration should not

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3689, ¶ 29 (1999) ("We acknowledge that, no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network.").

2 See Gerald W. Brock, "Incremental Cost Of Local Usage," March 16, 1995, filed in CC Docket No. 95-185 (describing studies of local usage costs and concluding that 0.2 cents per minute is the average per minute cost of local traffic termination).

3 See, e.g., Proceeding to Examine Reciprocal Compensation, Dkt. No. 21982, 2000 WL 1424921 (Tex. P.U.C. July 14, 2000) (recognizing that the "current volumes of traffic between carriers do not support adoption of the bill-and-keep method"); Reexamine Reciprocal Compensation, Case 99-C-0529, 1999 WL 1020550 (N.Y.P.S.C. Aug. 26, 1999) (rejecting bill-and-keep as not cost-based); ICG Telecom Group, Inc., Case No. 99-1153-TP-ARB, 1999 WL 1489378 (Ohio P.U.C. Dec. 15, 1999) (stating that "there is no question ICG incurs costs when it delivers ISP-bound traffic that has originated from an Ameritech customer" and rejecting a reciprocal compensation rate of zero); On the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs for All Access, Toll, and Local Exchange Services Provided by Ameritech, Case No. U-11831 (Mich. P.S.C. Nov. 16, 1999) (adopting cost studies that enumerate transport and termination costs above de minimis levels); Petition of Electric Lightwave, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with GTE Northwest Inc., Order No. 99-218 (Or. P.U.C. March 17, 1999) (permitting symmetrical compensation to allow carriers to recoup costs incurred to terminate traffic to ISPs); ITC--DeltaCom Communications, Inc. v. BellSouth Telecomms., Inc., Dkt. P-55, Sub 1197, 2000 WL 1089559 (N.C.U.C. July 12, 2000) (enforcing reciprocal compensation between interconnecting parties for calls that terminate to ISP customers). Regardless of whether the FCC's pricing rules are ultimately upheld as permissible under the Communications Act, the Commission has unquestionably determined that, as a matter of economics, prices above de minimis levels are appropriate for unbundled switching and shared transport. This fact is reflected in sections 51.505-51.515 (establishing pricing rules for unbundled network elements, including switching and shared transport, and establishing interim proxy prices), some provisions of which have been vacated.

4 See Declaration of Don J. Wood, filed with TWTC Reply Comments (corrected version), Aug. 7, 2000, CC Docket Nos. 96-98, 99-68 ("Wood Dec.").

distinguish voice and ISP-bound calls. Wood Dec. ¶¶ 20-21. Second, when a CLEC performs the terminating switching function for delivery of traffic to an ISP that subscribes to ISDN PRI services, it most assuredly incurs traffic sensitive, incremental costs that may be higher than the traffic sensitive, incremental costs that would be incurred if ISDN PRI services were not used. Id. ¶¶ 22-26. Third, to the extent that states have incorrectly included originating switching functions in termination rates, the answer is again to correct the rate structure rather than conclude that termination is costless. Id. ¶ 27. Fourth, the Internet dial-up "busy hour" is in the evening and weekends, and it is likely that this is also the busy hour for CLEC switches that serve ISPs. Id. ¶ 28. In sum, CLECs incur either the same level of costs or a higher level of costs when they transport and terminate ISP-bound calls as LECs incur when they perform these functions for voice calls.

Undaunted by this evidence, the ILECs continue to concoct arguments in support of their position that transport and termination of ISP-bound traffic is essentially costless for CLECs. The most recent iteration of the argument is that, when CLEC switches are not utilized at full capacity, CLECs incur no incremental costs when transporting and terminating traffic. This may in fact accurately characterize the manner in which CLECs incur costs. Busy hour demand (or, more precisely, projections of busy hour demand) drive the investment decision to place a given amount of switching capacity into place. But, as explained in section 3 below, as a practical matter costs associated with the traffic sensitive portions of the switch investment cannot be recovered based on busy hour minutes of use. The telecommunications industry instead uses rate structures based on total minutes. The observation that a CLEC incurs de minimis incremental costs when terminating traffic while the CLEC switch is not at full utilization is therefore irrelevant. If the Commission were to retain an averaged per minute termination charge for all minutes of traffic, but then rule that CLECs cannot charge during off-peak periods, CLECs would not be able to recover their costs. The resulting rate structure would amount to a peak-load pricing scheme (again, a practical impossibility) under which the peak hour price (which in fact would still be the average per minute price) is set below the CLEC's costs. The ILEC argument regarding CLEC costs at times when CLEC switches are not fully utilized therefore leads to absurd and unsustainable results.[5]

But even assuming that peak-load pricing could be adopted as a practical matter, the ILECs would in most cases still be forced to compensate CLECs for transport and termination of ISP-bound traffic. For a CLEC that is terminating large volumes of traffic to an ISP, the ISP-bound traffic will likely drive the busy hour of that CLEC switch. Taken to its logical conclusion, therefore, the ILEC argument illustrates why the existing averaged per minute charges for terminating switching leaves them in essentially the same position in which they would find themselves under a peak-load pricing regime. See discussion infra section 3.

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[5] It should also be noted that the ILEC argument leads to discriminatory treatment of CLECs that are just beginning to build their customer bases. ILECs, of course, already have large customer bases, as a result of their status as former protected monopolists. Their switches generally approach capacity during peak periods. But CLECs often do not have enough traffic to approach capacity even during their busy hours. A pricing regime that allowed recovery of switching costs only when a LEC's switch approaches full capacity would therefore prevent CLECs from recovering any costs during the crucial initial stages of entry. ILECs would, however, be permitted full recovery. Thus, in all events, the relevant time period for peak-load pricing should be a carrier's busy hour (the time when it carries the most traffic), not the time when the carrier's switch approaches full capacity.

2. The Commission Cannot And Should Not Impose Bill And Keep On All Traffic Subject To Section 251(b)(5), Unless Traffic Is Roughly Balanced Between LECs.

The Commission has neither the legal authority nor a policy basis for imposing bill and keep on all traffic subject to Section 251(b)(5), regardless of how imbalanced. Requiring bill and keep in cases of significant traffic imbalances would fly in the face of the language of Section 252(d)(2), which governs the pricing for Section 251(b)(5) traffic, and sound public policy.

The language of Section 252(d)(2) cannot be read to provide the Commission with the authority to mandate bill and keep in cases of significant traffic imbalances. Section 252(d)(2) requires that reciprocal compensation rates allow for the recovery of the "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C. § 252(d)(2)(A)(i). Such costs shall be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." Id. § 252(d)(2)(A)(ii). The statute goes on to allow "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)." Id. § 252(d)(2)(B)(i) (emphasis added). These provisions bestow upon all LECs the right to recover the "additional costs" of terminating local calls, and then allow such recovery to be achieved through the offsetting of reciprocal compensation obligations. Of course, arrangements for offsetting reciprocal compensation obligations such as bill and keep do not allow a LEC to recover its costs of termination where the LEC terminates significantly more traffic than it originates.[6] This is precisely what the Commission concluded in the Local Competition Order:

> Section 252(d)(2)(A)(i) provides that to be just and reasonable, reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with transport and termination." In general, we find that carriers incur costs in terminating traffic that are not *de minimis*, and consequently, bill-and-keep arrangements that lack any provisions for compensation do not provide for recovery of costs.

Local Competition Order ¶ 1112. The Commission explained further that, where LECs pay symmetrical rates for the transport and termination of traffic, and the balance of traffic between two LECs is roughly equal, bill and keep affords adequate cost recovery in compliance with the terms of Section 252(d)(2). Id. ¶¶ 1112-1113. But the statute simply does not permit the imposition of bill and keep where one LEC terminates significantly more traffic than the other LEC.[7]

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[6] In the local competition proceeding in 1996, many CLECs did support the adoption of bill and keep. But CLECs did so based on the expectation that traffic between CLECs and ILECs would be roughly in balance. See id. ¶ 1103 (summarizing CLEC comments). Indeed, several CLECs acknowledged that bill and keep could not be defended in the presence of significant traffic imbalances. Id. Thus, as a general matter, the position taken here is consistent with the position adopted by CLECs in 1996.

[7] The fact that Congress drafted Section 252(d)(2) to require that LECs be compensated for the costs of transport and termination also demonstrates that it intended to avoid any possible Fifth Amendment takings claims that may arise as a result of mandated bill and keep. See Bell Atl. Tel. Cos. v. FCC, 24 F.3d 1441, 1445-46 (D.C. Cir.

Moreover, establishing a price of zero for the exchange of traffic without regard to traffic imbalances would undermine the competitive purpose of Sections 251-252 and the 1996 Act in general. Sections 251-252 are designed to establish the preconditions for efficient competition. But bill and keep would underprice the transport and termination functions where one LEC terminates much more traffic than it originates. This would create exactly the kind of distortion that overpriced transport and termination has created since 1996. As the Commission recognized in the Local Competition Order, "as long as the cost of terminating traffic is positive [which it most certainly is], bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic." Local Competition Order ¶ 1112. Indeed, in advocating the adoption of bill and keep for ISP-bound traffic, it appears that the ILECs have learned nothing from the last four years. The ILECs, of course, initially convinced state commissions to set reciprocal compensation rates above cost in the hope of raising CLEC costs. Many CLECs responded by serving ISPs. Now the ILEC advocacy has swung all the way in the other direction in the hope that bill and keep will prevent even efficient CLECs from serving ISPs. But an inefficiently low price for termination will encourage overconsumption of originating services. Such inefficient incentives will only be eliminated if reciprocal compensation rates are set based on the cost of transport and termination.

In any event, this is the wrong proceeding to address bill and keep for the exchange of any traffic. The Commission has indicated that it intends to issue a Notice of Inquiry to address comprehensively the issue of inter-carrier compensation, including apparently whether bill and keep should be applied to all forms of inter-carrier telecommunications traffic. Without taking any position on the merits of a broad application of bill and keep to inter-carrier compensation, TWTC urges the Commission not to pre-judge the outcome of a broader proceeding by selectively applying bill and keep only to local traffic at this time. If, after full notice and public comment, the Commission believes that bill and keep is appropriate and legally permissible for inter-carrier compensation, it should implement it simultaneously and uniformly across all forms of inter-carrier traffic. In no event should the Commission adopt bill and keep for only one form of traffic.

3. There Is No Basis For Adopting Capacity-Based Or Peak-Load Pricing For Reciprocal Compensation.

The existing average per minute charges used to recover the variable costs of transporting and terminating Section 251(b)(5) traffic, although imperfect, do not need to be fundamentally changed to address their imperfections. To be sure, there may well be rate structure changes that can and should be made to make the current regime more efficient. For example, as mentioned, it may make sense to require that call set-up costs be recovered in the form of flat per call charges, rather than through per minute charges. Indeed, the states are making this change to reciprocal compensation prices.[8] But there is no basis for requiring recovery of usage-sensitive costs through capacity-based charges or for

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1994) (the FCC may not construe the Communications Act in a way that gives rise to takings claims unless the language of the Act includes a "clear warrant" for such a construction or unless the agency's ability to implement the statutory provision would be rendered a nullity absent a construction that would create takings claims).

[8] See, e.g., Proceeding to Examine Reciprocal Compensation, Dkt. No. 21982, 2000 WL 1424921, at *25 (Tex. P.U.C. July 14, 2000) (establishing a separate per call charge for end office call set-up).

adopting any form of peak-load pricing in this proceeding. Any new rate structure will increase the level of uncertainty in the market, a cost the Commission must seriously consider when weighing the costs and benefits of regulation. In addition, capacity-based and peak-load pricing both suffer from distinct and serious problems that counsel against their adoption at this time.

A capacity-based rate structure (e.g., per DS1 circuit equivalent of usage) offers few benefits and potentially significant costs. Such a structure would have little effect on the price paid for transport and termination because, as under current charges, the total forward-looking incremental cost of transport and termination would still be recovered. The only difference is that the total cost would be divided on a circuit-by-circuit basis (or some other capacity measure), rather than on a per minute basis. Moreover, it is hard to see why the pricing signals under a capacity-based rate structure would be any more accurate than under a per minute rate structure. Even where ISPs subscribe to ISDN PRI service, which gives the subscriber priority treatment in the allocation of switching capacity, the switching capacity used for this service is unquestionably shared, and its use for termination unquestionably causes CLECs to incur incremental, traffic-sensitive costs. See Wood Dec. ¶ 24. Per minute charges would appear to capture such costs just as accurately, or more so, than capacity-based charges. Thus, it does not appear that mandating capacity-based charges would increase efficiency in any way, or produce any other identifiable benefit. Instead, it would probably do some harm, since implementing such a proposal would require state commissions and carriers to incur the substantial cost of developing capacity-based charges.

Nor should the Commission require that reciprocal compensation rates be based on peak-load demand. To convey fully optimal pricing signals, peak-load pricing must vary by a number of factors, such as time of day, day of the week, and location. Implementation of such a detailed pricing structure is impractical. For different reasons, so-called "simple" peak-load pricing (which typically establishes two prices -- one for peak and one for off-peak), while perhaps easier to implement, is also undesirable because it fails to send optimal pricing signals. Given these problems, it is not surprising that the Commission has repeatedly refused to require peak-load pricing for network elements. For the same reasons, peak-load pricing is not suited to ISP-bound traffic and should be rejected.[9]

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[9] The following analysis draws extensively from a discussion of peak-load pricing contained within a paper by Drs. Steven R. Brenner and Bridger M. Mitchell, entitled "Economic Issues in the Choice of Compensation Arrangements for Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers," that was attached as an exhibit to the Comments of the Cellular Telecommunications Industry Association filed in Interconnection Between Local Exchange Carriers and CMRS Providers, CC Dkt. No. 95-185 (filed March 4, 1996) ("CMRS Paper"). Within the context of interconnection compensation arrangements between LEC-CMRS providers, Drs. Brenner and Mitchell examined the advantages and disadvantages of adopting usage sensitive prices versus bill and keep, but were unable to definitively conclude that one arrangement was clearly superior. See id. at 49. Nonetheless, even if they had concluded that bill and keep was superior to usage sensitive pricing for LEC-CMRS interconnection (which they did not), it should be noted that at least two facts distinguish LEC-CLEC interconnection. First, unlike LEC-CMRS interconnection, in which each provider faces different fixed and variable costs for terminating traffic, interconnecting wireline carriers face similar costs. Second, with costs being roughly the same, the only other factor to consider is the balance in the amount of traffic delivered to each provider during its busy or "peak" hour. Because CLEC peak hours for terminating ISP-bound traffic coincide with CLEC peak hours generally, the substantial imbalances between LEC-CLEC termination of

True peak-load pricing, while theoretically optimal, cannot be implemented as a practical matter at this time. Patterns of telephone usage vary by a number of factors, including by time (e.g., from hour to hour, by day of the week, and time of the year), by location (e.g., from business to residential areas), and by type of service (e.g., voice, data). See CMRS Paper at 33-34 & n.34. Yet, setting theoretically optimal prices at this level of detail (i.e., from hour to hour, by serving wire center, and by type of service) is not feasible. Id. at 33. Not only is it "difficult and costly to collect the detailed demand information necessary to calculate such prices, [but] demand may [also] be constantly shifting and [thus] require frequent changes in peak pricing periods." Id. Additional issues arise from a billing perspective because "it is costly to collect charges based on such prices" and "consumers likely would find it difficult to deal with such complicated pricing structures (assuming they were reflected in retail pricing)." Id. at 33-34. Further, "[v]arying prices would be unlikely to have the desired effect on consumer calling, even if implemented, because consumers are unlikely to understand and know the varying prices of calling at various times." Id. at 34.

Simple peak-load pricing suffers from different, but equally fatal, problems. As noted, simple peak-load pricing studies typically assume a uniform, higher demand "peak" period and a uniform, lower demand "off-peak" period, making it optimal to set only two price levels. Id. at 33. Setting only two (or even three) prices, however, does not send fully optimal price signals. Id. at 33-34. Specifically, because there are generally only two pricing periods, simple "[p]eak period prices may be right 'on average' over the period, but will be too low for some traffic, too high for most of the rest of the traffic, and just right only by accident." Id. at 35. As a result, the benefits of simple peak-load pricing (which are minimal when compared to uniform, per minute pricing) are likely outweighed by the increased costs of implementing such a compensation arrangement.

Based on similar concerns, the Commission has considered and rejected peak-load pricing for unbundled network elements, including local switching and tandem-switched and common transport. See Access Charge Reform, Fifth Report and Order, 14 FCC Rcd 14221, ¶ 211 (1999) (finding no reason to revisit its conclusion that peak-load pricing was inappropriate for local switching); Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, ¶¶ 148, 194 (1997) ("Access Charge First Report and Order") (rejecting peak-load pricing for local switching, tandem-switched and common transport); Local Competition Order ¶¶ 755-757.[10] The Commission has described in detail the practical problems associated with peak-load pricing:

> For example, different parts of a given provider's network may experience peak traffic volumes at different times (e.g., business districts may experience their peak period between 10:00 and 11:00 a.m., while suburban areas may have their peak periods between 7:00 and 8:00 p.m.). Moreover, peak periods may change over time. For

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ISP-bound traffic underscore that CLECs will incur termination costs that will not be compensated under bill and keep.

[10] While the Commission has previously recognized that peak-load pricing might better reflect the costs of providing traffic-sensitive services, even in that instance, it refused to require carriers to develop peak-sensitive access charge rate structures because of the potential difficulties in doing so. See Access Charge Reform, 11 FCC Rcd 21354, ¶ 78 n.141 (1997) (citation omitted).

> instance, growth in Internet usage may create new peak periods in the late evening. Further, charging different prices for calls made during different parts of the day may cause some customers to shift their calling to the less expensive time periods, which could shift the peak or create new peaks. Thus, to design an efficient peak-sensitive pricing system requires detailed knowledge of both the structure of costs as well as demand.

Local Competition Order ¶ 756. As a result, the Commission "conclude[d] that the practical problems associated with peak-sensitive pricing make it inappropriate for us to require states to impose such a rate structure for unbundled local switching or other shared facilities whose costs vary with capacity." Id. ¶ 757.

Nothing in the record in this proceeding indicates that the practical difficulties of peak-load pricing are somehow lessened for LEC-CLEC exchange of local traffic. This is not to say that average per minute prices send optimal price signals. But the cost of achieving optimal pricing signals far outweighs the costs associated with the current rate structure. Given its theoretical advantages, it may make sense for the Commission to revisit peak-load pricing in the context of its planned comprehensive inter-carrier compensation proceeding. It should not, however, hold up this proceeding while it attempts to design a complex pricing scheme to account for peak-load usage.

4. An Originating LEC Does Avoid Costs When Another LEC Terminates ISP-Bound Traffic.

When calls, including ISP-bound calls, originate on one LEC's network and terminate on another LEC's network, the originating LEC avoids the forward looking cost of transport and termination. ILECs have argued that delivering ISP-bound calls to CLECs causes ILECs to incur extra costs associated with tandem switching and transport, and that this fact justifies bill and keep for ISP-bound traffic. This argument is easily rejected. CLECs and ILECs exchange all local traffic, ISP-bound included, over the same interconnection facilities. There is no basis, therefore, for treating ISP-bound calls differently because of ILEC origination costs.

More fundamentally, there is no basis for concluding that the ILECs fail to avoid costs when calls, including but not limited to calls bound for ISPs, are terminated by a CLEC. The ILEC arguments in support of such failure rely on two factual assumptions, both incorrect. First, the ILECs assume that a meaningful percentage of the calls delivered to ISPs would, if they had remained on the ILEC network, have been completed as intra-office calls. If this were true, the ILEC would not have incurred a separate cost for terminating switching, and therefore would not avoid such a cost when the function is performed by a CLEC. In reality, there has been no demonstration that such intra-office calls occur between ISP subscribers and ISPs with any frequency. Indeed, there is some indication that the ILECs themselves do not even know the percentage of traffic that originates and terminates among

end users served by the same end office.[11] Nor is there any reason to assume that an ISP's customers reside within close physical proximity to the physical location of the ISP's terminating equipment.

Second, the ILECs argue that, because a CLEC sometimes establishes its point of interconnection ("POI") at the location of the ILEC tandem, the ILEC incurs more transport costs to deliver an ISP-bound call to the CLEC than it would have incurred if the call had stayed on the ILEC network. Because transport costs have some mileage sensitivity, an increase in the required transport distance – if such an increase were required – could serve to create additional costs for that ILEC that are not avoidable when the CLEC performs the function of call termination. In support of this argument, the ILECs argue (correctly) that interoffice traffic that remains on their networks may travel over direct trunks between end offices (so-called 5-5 trunks). They then imply (incorrectly) that the mileage associated with such trunking is likely to be less than the mileage associated with carrying the call to the CLEC POI near the ILEC tandem. This argument overlooks the fact that the direct trunking facilities between ILEC end offices do not simply travel "cross country" along a straight-line path from one end office to the other, but invariably travel along existing trunking routes that pass through the locations of the ILEC tandems. As a result, the ILECs have the same or greater number of transport miles, and incur the same or greater transport mileage costs, for a call that remains on their network versus a call that is delivered to, and terminated by, a CLEC. When the underlying facts are considered, therefore, it is clear that an ILEC avoids switching and transport costs when the functions of call termination are performed for it by a CLEC. Cost-based rates for reciprocal compensation will leave the ILEC in a comparable, if not slightly improved, position than it would have faced if the call had remained on its network.

It has also been suggested that an originating LEC does not avoid costs where another LEC terminates traffic during the originating LEC's off-peak periods. Such an argument is based on the demonstrably false premise that peak periods occur at consistent times throughout ILEC and CLEC networks. An ILEC may not avoid originating switching costs during off-peak periods for the switch serving the originating customer, because there are no incremental originating costs to avoid. It may nevertheless avoid terminating switching costs (those relevant to reciprocal compensation), however, because the switch that would have been utilized by the ILEC to terminate the call (in the absence of the CLEC doing so) may be experiencing its busy hour. There is absolutely no reason to assume that the busy hour for the ILEC originating switch is the same as the busy hour for either (1) the switch that the ILEC would use to terminate the call, or (2) the switch that the CLEC would use to terminate the call. Because different switches experience different busy hours, any attempt to develop a reciprocal compensation structure based on peak usage falls victim to the problems described in section 3 above.

Furthermore, it is worth repeating the point made numerous times by TWTC and other firms that are attempting to provide local service to ISPs: the ILECs' true complaint regarding Internet traffic has nothing to do with reciprocal compensation or CLECs. Internet traffic is certainly growing, and carrying that traffic unquestionably imposes costs on LECs. But so long as reciprocal compensation charges are based on the forward-looking cost of transport and termination, and they

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[11] See Testimony of Richard Scholl on behalf of Pacific Bell, California PUC Rulemaking 00-02-005, T.E. p. 1041 (Aug. 18, 2000) (conceding that Pacific Bell does not have this information).

increasingly are,[12] an ILEC is in precisely the same financial position if it transports and terminates ISP-bound traffic itself or pays a CLEC to perform this function. To the extent that the ILECs experience a shortfall as a result of carrying ISP-bound traffic (and, as explained below, there is no basis for concluding that they do), it is because their originating charges, paid by local subscribers, are set below cost. In any event, this is an issue that the ILECs need to bring to state regulators, not the FCC.[13] The only question for the FCC in this proceeding is how to ensure that the rate for the exchange of local traffic does not harm competition for serving ISPs. The only solution is a cost-based reciprocal compensation price.

But even if the Commission were to consider the question of whether ILECs experience a revenue shortfall as a result of underpriced originating charges, it would probably find that the ILECs do not experience a shortfall now and are unlikely to experience one in the future. To begin with, ILEC revenue from the sale of second lines used for dial-up ISP connections (revenue which is likely close to 100% profit, given that the cost of most ILEC second lines has been recovered long ago) in most cases more than compensates for the costs of originating ISP-bound traffic. To the extent this is not true, states have generally averaged local rates across large geographic areas and built subsidies into vertical feature prices such that ILECs are almost invariably made whole. In fact, since the growth of the Internet began in earnest about three years ago, the ILECs have not shown that they have experienced any net negative financial effects.[14] As to the future, dial-up connections are likely to gradually be replaced by dedicated, high-speed connections such as xDSL. The ILECs are

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12 The states are systematically lowering reciprocal compensation rates to a level that approximates forward-looking costs. See, e.g., Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom Pursuant to Section 252(b) of the Telecomms. Act, 2000 WL 1022238, Order Modifying Decision 99-09-069 (Cal. P.U.C. May 18, 2000) (reducing the end office rate from $.0075 to $.002 per minute); Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, Case No. 99-C-0529, Opinion No. 99-10, 1999 WL 1020550 (N.Y.P.S.C. Aug. 26, 1999) (establishing a rebuttable presumption that, where traffic imbalances exceed 3:1, terminating LECs may not charge the tandem switching rate); Proceeding to Examine Reciprocal Compensation, Dkt. No. 21982, 2000 WL 1424921 (Tex. P.U.C. July 14, 2000) (reducing the per minute end office rate from $0.001507 to $0.0010423).

13 Access Charge First Report and Order ¶ 346 ("To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators.").

14 For example, SBC's market capitalization has steadily risen from $73 billion in 1997, SBC to Buy Ameritech for $71 Bln in Stock, Debt, Bloomberg News (May 11, 1998), to $178.6 billion in 1999, Statistics at a Glance -- NYSE:SBC (Oct. 18, 2000) <http://biz.yahoo.com/p/s/sbc.html>. BellSouth's market capitalization rose from $74 billion in 1998, Sector Spider Trust SEC filing, EDGARPlus (Dec. 21, 1998), to $78.4 billion in 2000, Statistics at a Glance -- NYSE:BLS (Oct. 18, 2000) <http://biz.yahoo.com/p/b/bls.html>. Verizon's market capitalization grew from $75 billion in 1998, Sector Spider Trust SEC filing, EDGARPlus (Dec. 21, 1998), to $131 billion in 2000, Statistics at a Glance -- NYSE:VZ (Oct. 18, 2000) <http://biz.yahoo.com/p/v/vz.html>. Of course, these increases in market capitalization are due in part to acquisitions and growth in lines of business other than local service (e.g., wireless). However, major acquisitions and growth in wireless services have not prevented other major telecommunications service providers, most notably AT&T, from experiencing severe market valuation discounts.

aggressively marketing such services, and they have projected vast profits from their sale.[15] Indeed, the ILECs' profit margins in the provision of these services will no doubt benefit from the fact that non-ILEC xDSL service providers (such as Northpoint and Covad) are quickly disappearing from the competitive market.[16] Thus, the revenues ILECs receive now and will receive in the near future for originating ISP-bound traffic are significant and likely compensatory. In no event can the Commission conclude based on the facts on the record in this proceeding that the ILECs experience a revenue shortfall on the originating side.

5. Conclusion

The discussion in the preceding sections makes clear that all LECs, including CLECs, incur costs that are more than de minimis when transporting and terminating traffic and that the terms of Section 252(d)(2) mandate that these costs be recovered through cost-based reciprocal compensation charges. It is also imprudent at this time to attempt to mandate that these charges be set using either a capacity-based or peak-load pricing approach. In both cases, the costs of implementing such new rate structures, not the least of which is the further uncertainty the industry would experience during the transition to a new rate structure, far outweigh any theoretical benefit they may (or may not) deliver. Furthermore, the Commission should reject the ILECs' specious claim that they do not avoid costs when CLECs perform transport and termination of calls originating on ILEC networks. The Commission should, indeed must, therefore rule that the exchange of ISP-bound traffic is subject to the existing state-set prices for reciprocal compensation. Any other result would be unlawful and would create new inefficient incentives for CLECs and ILECs alike.

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[15] See US West Investor Relations <http://www.qwest.com/about/ir/index.html> (March 3, 2000) (noting that US West was the only "RBOC to reach the milestone we set [in] early 1999 by delivering our high-speed data product, Megabit, to more than 110,000 customers"); SBC Communications, Inc., 1999 Annual Report at 2-3 (2000) (announcing that SBC invested $6 billion in building broadband networks to capitalize on the Internet's growth and that its Internet strategy "is targeted to generate more than $3.5 billion in new annual revenues"); BellSouth Investor Relations 3Q00 Earnings Commentary (visited Oct. 19, 2000) <http://www.bellsouth.com/investor/3q00comentaryh.shtml> (claiming that a key aspect of the 25.3% "record growth rate" in data-related revenues was "an 81% growth in DSL customers" and projecting a total of 200,000 DSL customers by the end of 2000); Verizon Communications Sets Financial Targets (Aug. 8, 2000) <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=41688> (stating that "the acquisition of OnePoint and the combination of DSL assets with Northpoint will increase long-term growth").

Of course, such dedicated services also eliminate reciprocal compensation, because they establish dedicated connections between ISP subscribers and ISPs.

[16] Verizon purchased Northpoint, merging the two companies' DSL businesses to create "a strong broadband competitor ideally positioned to unleash the Internet's full potential for delivering an unlimited array of content and applications to high-speed customers." See Verizon and Northpoint to Merge DSL Businesses to Create Leading National Broadband Company (Aug. 8, 2000) <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=41668>. SBC has agreed to invest $50 million in Covad and will begin marketing Covad's DSL service in and out of its service territory. See Covad, SBC Sign Deal for $750 Million and Settle Litigation, Communications Daily (Sept. 12, 2000) (noting that "SBC is acquiring 6% of Covad for $150 million pending regulatory approval").

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter are being provided for inclusion in the public version of the above-referenced proceeding.

Sincerely,

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cc: Tamara Preiss
Rodney McDonald
Adam Candeub